

# **Zoning Board of Appeals**

TOWN OF BRUNSWICK  
336 Town Office Road  
Troy, New York 12180

## **MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD March 18, 2013**

PRESENT were MARTIN STEINBACH, CHAIRMAN, TIMOTHY CASEY, E. JOHN SCHMIDT, JAMES HANNAN and CAROLINE TRZCINSKI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The Zoning Board of Appeals members reviewed the draft minutes of the February 25, 2013 meeting. Upon motion of Member Trzcinski, seconded by Member Hannan, the minutes were unanimously approved without amendment.

The first item of business on the agenda was the special use permit application submitted by Nancy Guzzo for property located at 137 Town Office Road. This matter had been scheduled for public hearing. The notice of public hearing was read into the record, noting that the public hearing notice had been published in the Troy Record, placed on the Town Sign Board, placed on the Town website, and mailed to all owners of adjacent property. Chairman Steinbach noted that the application had been reviewed at the February 25 meeting, and that all members were aware of the proposal to include an in-law apartment to the existing single-family residence at 137 Town Office Road. Chairman Steinbach opened the floor for receipt of public comment. Gregory Scott Hunter, 112 Town Office Road, inquired why a special use permit was necessary for the addition of an in-law apartment to the Guzzo home. Mr. Hunter indicated that he may need to install an in-law apartment at his home in the future, and questioned why a special use permit was required. Mr. Kreiger stated that the Brunswick Code does not allow for a single family home to have any type of apartment. Mr. Kreiger also explained that the Brunswick Code views the addition of an in-law apartment as a second dwelling unit on the property, which is not

permitted in the absence of a special use permit being issued by the Zoning Board of Appeals. Chairman Steinbach also stated that the addition of an in-law apartment could raise certain safety issues. Mr. Hunter questioned what safety issues could arise with just an in-law apartment. Attorney Gilchrist stated that with an in-law apartment, or any additional apartment to the single family home, may necessitate the installation of a second driveway or access way onto a public road, which could raise certain safety issues concerning traffic. Chairman Steinbach inquired of Mr. Kreiger as to issues of fire code compliance regarding an in-law apartment in an existing single family home. Mr. Kreiger stated that in the event the special use permit is issued, all fire code compliance issues will be reviewed by his Department in connection with building permit issuance. Member Trzcinski then inquired about the emergency access for the proposed in-law apartment, and whether a window or door was required. Mr. Kreiger stated that an emergency access window is allowed by code. Member Schmidt asked where the emergency access was to be located on this proposed project. Mr. Guzzo stated that the emergency access window is located in the existing bedroom proposed for the in-law apartment area. In relation to the proposed in-law apartment area, Chairman Steinbach asked whether there were any changes to the concept plan that had been submitted on the application. Mr. Guzzo stated that there were no changes to the concept plan, that there was an existing bathroom and bedroom which will be utilized for the in-law apartment, and that he proposes to simply add a kitchenette area. Marilyn Hunter, 112 Town Office Road, asked whether the addition of the kitchenette area is the reason that a special use permit was required in the Guzzo case. Mr. Kreiger stated that a separate living area, including a separate kitchen, does trigger the need for a special use permit for the in-law apartment. Mr. Kreiger stated that if an in-law was simply going to use an existing bedroom, and use the same living area, bathroom facilities, and kitchen facilities, then a special use permit would not be required since the in-law would be using the existing residential facilities. Gregory

Scott Hunter, 112 Town Office Road, stated that he did support the issuance of a special use permit in the Guzzo case. Chairman Steinbach asked if there was any further comments from the public. Hearing none, the Zoning Board of Appeals closed the public hearing on the Guzzo special use permit application.

Chairman Steinbach then asked the Board members if there were any questions concerning the Guzzo special use permit application. Member Trzcinski asked whether an existing two-car garage was part of the in-law apartment project. Mr. Guzzo stated that the two-car garage was not part of the in-law apartment area, and that the in-law apartment was on the other side of the house. Mr. Guzzo explained that the in-law apartment faces the south, with a separate access over an existing concrete pad that had previously been utilized in conjunction with a pool. Mr. Guzzo stated that the separate entrance exists already, and had been utilized in connection with the pool use. Members Hannan, Schmidt, and Casey had no questions on the application. Chairman Steinbach also stated he had no questions on the application. Attorney Gilchrist reviewed the standards for issuance of a special use permit, applicable to the in-law apartment special use permit application. In particular, Attorney Gilchrist stated that the factors of uniqueness and character of the area should be carefully considered by the Zoning Board of Appeals in its consideration of special use permit issuance. Member Schmidt indicated that he was of the opinion this application met all of the special use permit standards, and supported issuance of the special use permit. Member Hannan was in agreement with Member Schmidt. Member Trzcinski stated that while she was in general agreement with the special use permit issuance, the Zoning Board of Appeals should consider conditioning the special use permit on use of the apartment for in-law only, and that the apartment could not be utilized as a for-profit rental apartment unit to unrelated third parties. Mr. Guzzo immediately stated that he was not in agreement with that condition. Mr. Guzzo stated that in the event his mother, who is to be

moved into the in-law apartment, passed away, he may want to be able to utilize that area as a separate rental apartment. Mr. Guzzo argued that the property contains 60 acres, that no one will ever see the house or in-law apartment, and that he does not see why he could not use the in-law apartment in the future for a rental to unrelated third parties. Attorney Gilchrist stated that the application submitted by Guzzo for the special use permit expressly identified the use as an in-law apartment only, and that if the Applicant seeks to amend the application for consideration as a rental apartment unit, then the application would be so amended but would be subject to a new public hearing notice and public hearing. In addition, Attorney Gilchrist stated that the Board would need to consider all special use permit standards in relation to the addition of a for-profit rental apartment unit as opposed to an in-law apartment for family members only. Mr. Guzzo stated that he was under time constraints, and would continue the application in its current form. Attorney Gilchrist stated that Mr. and Mrs. Guzzo could apply to modify a special use permit condition in the future, if they so desire. Member Hannan stated that a rental unit presents different issues than an in-law apartment for family members only, that it takes on a commercial nature, that tenants can also be difficult and present issues that generally do not arise in connection with an in-law apartment for family members only. Mr. Guzzo responded that he would be living there, and would be able to control any potential tenant. Member Trzcinski stated that the Zoning Board needed to consider not just Mr. Guzzo, but any future owner of the property as well. Chairman Steinbach wanted to confirm that Mr. and Mrs. Guzzo wanted to continue the application seeking approval for an in-law apartment only, or whether they sought to amend the application to have the Zoning Board consider a separate for-profit rental apartment unit. Mr. Guzzo stated that they would continue with the current application seeking approval for an in-law apartment only. Member Schmidt also stated on the record that if the application sought approval for a for-profit rental apartment, then the Zoning Board would need to consider

in particular the standard pertaining to the owner obtaining a reasonable economic return on the property for uses permitted in that zone. Member Casey also stated that there are different fire code requirements for rental apartment units that may not be applicable in the case of an in-law apartment. Chairman Steinbach confirmed the application would be reviewed as an in-law apartment proposal only. Chairman Steinbach then asked whether the Board had any further questions or comments. Hearing none, Member Trzcinski made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Hannan. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, Member Hannan made a motion to approve the special use permit for the installation of an in-law apartment for family member use only, on the express condition that the apartment was not approved for use as a for-profit rental apartment to unrelated third parties. Member Casey seconded the motion subject to the stated condition. The motion was unanimously approved, and the special use permit issued to 137 Town Office Road for the installation of an in-law apartment subject to the condition that the apartment was for in-law, family use only, and expressly not approved for a for-profit rental apartment unit for unrelated third parties.

The Zoning Board members noted that with respect to a use variance application previously submitted by Oakwood Property Management, LLC, the Applicant has contacted the Zoning Board requesting that the use variance application be reviewed and processed. Attorney Gilchrist noted that he is currently researching a potential conflict of interest issue with respect to a Zoning Board member, and that such potential conflict of interest issue must be resolved prior to the use variance application being entertained by the Zoning Board. Attorney Gilchrist stated that he would complete his research on the issue, and provide further information to the Zoning Board.

Attorney Gilchrist also provided a procedural update to the Zoning Board members on the pending Oakwood Property Management litigation.

Chairman Steinbach noted that he would not be available for the regularly-scheduled April meeting on April 15, and requested that the Zoning Board consider moving the April meeting to April 22. The remaining Zoning Board members agreed that the April meeting of the Zoning Board will be held on April 22, rather than April 15. Attorney Gilchrist will publish a special meeting notice.

Mr. Kreiger reported that there were no new items of business to discuss.

The index to the March 18, 2013 meeting of the Zoning Board of Appeals is as follows:

1. Guzzo – special use permit – approved with condition.

There are currently no agenda items for the April meeting. Mr. Kreiger will update the Zoning Board members in the event an application is received prior to the special April meeting date of April 22.